

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5297 of 1987

Date of decision: 07-07-97

For Approval and Signature

The Hon'ble Mr. Justice S. K. KESHOTE

1. Whether Reporters of Local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not?
3. Whether their Lordships wish to see the fair copy of the judgment?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

R P MODI

Versus

STATE OF GUJARAT

Appearance:

MR PS PATEL for Petitioners

None present for Respondent No. 1, 2

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 07/07/97

ORAL JUDGEMENT

The matter was called out for hearing in the first round, second round and lastly in the third round. None put appearance on behalf of the respondents.

Heard the learned counsel for the petitioners, and perused the special civil application.

The petitioners - three in number - who are working as Assistant Educational Inspectors in Class III Education Service of the State of Gujarat filed this special civil application and prayer has been made for quashing and setting aside the provisional seniority list dated 2-5-1984. Further prayer has been made for restraining the respondents from acting in furtherance of the aforesaid seniority list. The counsel for the petitioners contended that in the seniority list published on 15th May, 1968 for the Gujarat Education Service Class III, seniority has been assigned to the incumbents on the basis of the date of appointment as graduate. In the provisional seniority list dated 2-5-1984 of the Gujarat Education Service Class III, seniority has been assigned on the basis of training obtained by the incumbent. So two different criteria are made use of by the respondents in preparation of the seniority list of one and the same service. It has next been contended that this provisional seniority list has not been finalised so far.

2. I have given my thoughtful consideration to the submissions made by the learned counsel for the petitioner. Seniority list dated 15th May, 1968 was of the incumbents who were serving during the period from 11-1-1956 to 30-4-1960. It is not in dispute that petitioners had entered in service in the year 1963, 1962 and 1967 respectively and their names have not been there in the aforesaid seniority list and it could not have been. However, in the provisional seniority list of 2-5-1984 their names were shown, but it was provisional

seniority list. The petitioners filed objections against that provisional seniority list. Those objections were not found favour with the authority, as stated by the petitioners in para 6 of the petition. However, the fact remains that this provisional seniority list has not been finalised, and final seniority list has not been published so far. Promotions have been made by the respondents acting upon this provisional seniority list in the year 1993, and civil application has been filed by the petitioners for restraining the respondents from

making any further promotion. However, this petition was ordered to be listed for final hearing by this court, and interim relief was not granted.

3. In the special civil application the petitioners have come up with the case that Educational Service Class III (non clerical) Government Servants Association, Gujarat State, made representation against the aforesaid seniority list, and they have demanded that the seniority should have been fixed on the basis of date of joining as graduate. This representation also has not been decided and in civil application No.935/93 filed by the petitioner before this Court, in para 2 thereof, it has been mentioned that in the year 1988 another seniority list was also prepared on the basis of date of appointment, but the respondents are not implementing the said seniority list. These facts have not been controverted by the respondents, as they have not filed any reply to the civil application. So there are two seniority lists, i.e. one provisional seniority list dated 2-6-1984 and the other which has been prepared in the year 1988, and these two lists have been prepared applying two different criteria. However, the matter is still not clear. The respondents have not filed any reply nor provided any assistance. It is also not the case of the petitioners that the seniority list of 1988 was final seniority list.

4. In view of the fact that the petitioners had made grievance against the provisional seniority and further in the 1988 seniority list has been prepared on the basis of date of joining, it is in the interest of justice that this special civil application is disposed of with the direction to respondent No.2 to decide the matter in respect of seniority of Gujarat Educational Inspectors Class III, within a period of three months from the date of receipt of the certified copy of this order. The petitioners may be heard while deciding the question of seniority by the respondents. After hearing the petitioners, in case the provisional seniority list is not given final shape, the final seniority list shall be published. If the final seniority list has already been published, then this exercise is not required to be undertaken, and the copy of the final seniority list may be sent to the petitioners. In case the petitioners are still not satisfied with the final seniority list, it shall be open to them to take the legal remedies available to them. The special civil application stands disposed of in the aforesaid terms. Rule discharged. No order as to costs.

